

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

BILL NO. R-06-6

SPONSORED BY:

1 **RESOLUTION**

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5 **APPROVING THE SALE OF ALBUQUERQUE BERNALILLO**
6 **COUNTY WATER UTILITY AUTHORITY (THE “AUTHORITY”)**
7 **JOINT WATER AND SEWER SYSTEM IMPROVEMENT REVENUE**
8 **BONDS, SERIES 2006A (THE “SERIES 2006A BONDS”), IN THE**
9 **AGGREGATE PRINCIPAL AMOUNT OF \$_____ (THE**
10 **“SERIES 2006A BONDS”); ESTABLISHING CERTAIN DETAILS OF**
11 **THE SERIES 2006A BONDS; PROVIDING FOR THE PAYMENT OF**
12 **THE COSTS OF ISSUANCE OF THE SERIES 2006A BONDS;**
13 **APPROVING DISCLOSURE AND OTHER DOCUMENTS RELATING**
14 **TO THE SERIES 2006A BONDS; AND RATIFYING ACTION**
15 **PREVIOUSLY TAKEN IN CONNECTION THEREWITH.**

16
17 **WHEREAS**, unless otherwise defined in Section 1 of this Sale Resolution or
18 the context requires otherwise, capitalized terms in this Sale Resolution have the
19 same meaning assigned to those terms in Section 1 of Ordinance No. O-06-2 (the
20 “Bond Ordinance”) adopted by the Board of the Authority (the “Board”) on May 17,
21 2006; and

22 **WHEREAS**, the Sale Resolution is adopted pursuant to the Bond Ordinance
23 in order to approve the terms, sale price , maximum interest rates and other matters

1 with respect to the Bonds; and

2 **WHEREAS**, the Board has adopted the Bond Ordinance which authorizes the
3 issuance of the Bonds and provides for the adoption of one or more Sale
4 Resolutions by the Board to approve terms and documents relating to the issuance,
5 delivery, sale and administration of the Bonds, and the Sale Resolution is adopted
6 by the Board for those purposes; and

7 **WHEREAS**, the Authority adopts this resolution pursuant to the authority
8 granted to it in Section 72-1-10, NMSA 1978; and

9 **WHEREAS**, it is in the best interests of the Authority to sell the Bonds to the
10 Purchaser upon the terms as set forth in the Bond Legislation and the Bond
11 Purchase Agreement; and

12 **WHEREAS**, the Preliminary Official Statement, the proposed form of Official
13 Statement, the form of Continuing Disclosure Undertaking, the form of Bond
14 Purchase Agreement and the form of the Series 2006A Municipal Bond Insurance
15 Policy are on deposit with the Authority and are presented to the Board; and

16 **WHEREAS**, all required authorizations, consents and approvals of any
17 governmental body, agency or authority in connection with the authorization,
18 execution and delivery of the Series 2006A Bonds, which are required to have been
19 obtained by the date on which the Sale Resolution is adopted or which or will be
20 required to be obtained prior to the date of issuance of the Series 2006A Bonds
21 have been or will have been obtained by such dates;

22 **BE IT RESOLVED BY THE BOARD, THE GOVERNING BODY OF**
23 **ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY:**

24 **SECTION 1.** Definitions. "Purchaser" means RBC Capital Markets and J.P.
25 Morgan.

26 **SECTION 2.** Ratification of Prior Actions and Awarding the Bonds. All action
27 previously taken (not inconsistent with the provisions of this Sale Resolution or the
28 Bond Ordinance) by the Board and the officers of the Authority, directed toward the
29 authorization, pledge, collection and distribution of the Pledged Revenues and the
30 authorization, issuance and sale of the Series 2006A Bonds is ratified, approved and
31 confirmed.

1 **SECTION 3.** Findings. The Board declares that it has considered all relevant
2 information and data and makes the following findings:

3 **A.** The issuance of the Series 2006A Bonds in the amount of
4 \$_____ under the Act to provide funds to acquire and construct the Project is
5 necessary and in the interest of the public health, safety, morals and welfare of the
6 residents of the geographic area served by the of the Authority.

7 **B.** The interest rates set forth in Section 5, the net effective interest
8 rate of _____ per annum, the underwriter's discount of \$_____ for the sale of the
9 Series 2006A Bonds are reasonable under existing and anticipated bond market
10 conditions and are necessary and advisable for the marketing and sale of the
11 Bonds.

12 **C.** The Authority will acquire and construct the Project with the
13 proceeds of the Bonds together with other funds of the Authority, if any.

14 **SECTION 4.** Bonds' Details.

15 **A.** Principal Amount. The Series 2006A Bonds shall be issued in
16 one series in the aggregate principal amount of \$_____ shall be designated the
17 Albuquerque Bernalillo County Water Utility Authority Joint Water and Sewer System
18 Improvement Revenue Bonds, Series 2006A, to provide funds, together with other
19 available funds of the Authority, if any, to finance the acquisition and construction
20 of the Project and to pay Expenses relating to the issuance of the Series 2006A
21 Bonds.

22 **B.** Series Date; Registration. The Series 2006A Bonds shall be
23 dated the day of delivery, which is anticipated to be on or about July 12, 2006 (the
24 "Series Date"), and shall be issued in fully registered form only, without coupons,
25 and when issued will be registered in the name of Cede & Co., as nominee of The
26 Depository Trust Company ("DTC"), New York, New York as registered owner of the
27 Bonds, all as provided in the Bond Ordinance.

28 **C.** Interest Payment Date; Interest Rates; Maturities; Price. The
29 Bonds shall bear interest payable on the Interest Payment Date, beginning on
30 January 1, 2007, at the rates per annum, maturing in the years and amounts, set
31 forth below:

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YEAR	PRINCIPAL AMOUNT	INTEREST RATES
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D. Prior Redemption.

(1) Optional Redemption. The Series 2006A Bonds maturing on and after _____ shall be subject to redemption prior to their respective maturities, at the option of the Authority in order of any order of maturity as determined by the Authority in whole or in part at any time, on or after _____, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest to the date of redemption.

(2) Mandatory Redemption. The Series 2005A Bonds maturing on July 1, _____, July 1, _____ and July 1, _____, are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the years and in the principal amounts stated below:

[insert]

SECTION 5. Parameters of Ordinance. The net effective interest rate on the Bonds is less than 12% per annum. The maturity dates of the Bonds do not exceed fifty years. All other terms and conditions relating to the Bonds and the sale of the Bonds to the Purchaser set forth in this Sale Resolution and the Bond Purchase Agreement are within the parameters established by the Bond Ordinance.

SECTION 6. Accounts and Funds. The Authority shall establish such Funds and Accounts as required by the Bond Ordinance.

SECTION 7. Redemption of the Series 1997 Bonds. The Redeemed Bonds are portions of the Series 1997 Bonds in the par amounts and having the maturity dates set forth below:

1	MATURITY	
2	DATE	PAR
3	<u>JULY 1</u>	<u>AMOUNT</u>
4	2007	\$3,000,000
5	2008	\$2,000,000

6 The particular Series 1997 Bonds to be redeemed Bonds shall be selected
7 by lot in such a manner as determined by the Paying Agent. The Paying Agent shall
8 use funds in the Redemption Account, consisting of legally available funds other
9 than proceeds of the Series 2006A Bonds, to redeem the Redeemed Bonds on July
10 12, 2006. All action previously taken (not inconsistent with the provisions of the
11 Bond Legislation) by the Authority and the Paying Agent directed toward the
12 redemption of the Redeemed Bonds is ratified, approved and confirmed.

13 **SECTION 8.** Provisions Relating to Bond Insurance. So long as there is a
14 valid, binding, and enforceable municipal bond insurance policy guaranteeing the
15 scheduled payment of principal of and interest on the Series 2006A Bonds, and
16 there is no Series 2006A Bond Insurer Event of Default (as defined below), the
17 provisions of this Section 8 shall govern the Bonds, notwithstanding anything to the
18 contrary set forth in the Bond Ordinance or this Sale Resolution.

19 **A. “Series 2006A Bond Insurer”** shall mean _____,
20 the issuer of the Series 2006A Municipal Bond Insurance Policy.

21 **B. “Series 2006A Bond Insurer Event of Default”** means any
22 one of the following events shall have occurred and be continuing:

23 **(1)** The Series 2006A Bond Insurer fails to make or provide
24 for any payment required under the Series 2006A Municipal Bond Insurance Policy
25 in accordance with its terms;

26 **(2)** The Series 2006A Bond Insurer (i) files any petition or
27 commences any case or proceeding under any provision or chapter of the United
28 States Bankruptcy Code or any other similar federal or state law relating to
29 insolvency, bankruptcy, rehabilitation, liquidation or reorganization; (ii) makes a
30 general assignment for the benefit of its creditors; or (iii) has an order for relief
31 entered against it under the United States Bankruptcy Code or any other similar

1 federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or
2 reorganization which is final and nonappealable; or

3 **(3)** a court of competent jurisdiction, the New York
4 Department of Insurance or other competent regulatory authority enters a final and
5 nonappealable order, judgment or decree (i) appointing a custodian, trustee, agent
6 or receiver for the Series 2006A Bond Insurer or for all or any material portion of its
7 property, or (ii) authorizing the taking of possession by a custodian, trustee, agent
8 or receiver of Series 2006A Bond Insurer, or the taking of possession of all or any
9 material portion of the property of Series 2006A Bond Insurer.

10 **C. “Series 2006A Municipal Bond Insurance Policy”** or
11 **“Policy”** shall mean the municipal bond insurance policy issued by the Series
12 2006A Bond Insurer insuring the payment when due of the principal of and interest
13 on the Series 2006A Bonds as provided therein.

14 **D.** Any provision of this Sale Resolution expressly recognizing or
15 granting rights in or to Series 2006A Bond Insurer may not be amended in any
16 manner which affects the rights of Series 2006A Bond Insurer hereunder without the
17 prior written consent of Series 2006A Bond Insurer.

18 **E.** Unless otherwise provided in this Section 8, the Series 2006A
19 Bond Insurer’s consent shall be required in addition to Bondholder consent, when
20 required, for the following purposes: (i) execution and delivery of any supplemental
21 ordinance or any amendment, supplement or change to or modification of this Sale
22 Resolution (ii) removal of the Paying Agent and selection and appointment of any
23 successor paying agent; and (iii) initiation or approval of any action not described
24 in (i) or (ii) above which requires Bondholder consent.

25 **F.** Any reorganization or liquidation plan with respect to the
26 Authority must be acceptable to Series 2006A Bond Insurer. In the event of any
27 reorganization or liquidation of the Authority, the Series 2006A Bond Insurer shall
28 have the right to vote on behalf of all bondholders who hold the Series 2006A Bond
29 Insurer-insured bonds absent a default by the Series 2006A Bond Insurer under the
30 applicable Municipal Bond Insurance Policy insuring such Series 2006A Bonds.

31 **G.** Anything in the Bond Legislation to the contrary

1 notwithstanding, upon the occurrence and continuance of an Event of Default, and
2 so long as there is no Series 2006A Bond Insurer Event of Default, the Series 2006A
3 Bond Insurer shall be entitled to control and direct the enforcement of all rights and
4 remedies granted to the Bondholders under this Sale Resolution.

5 **H.** While the Series 2006A Municipal Bond Insurance Policy is in
6 effect, the Authority shall furnish to Series 2006A Bond Insurer (to the attention of
7 the Surveillance Department, unless otherwise indicated):

8 **(1)** Annual audited financial statements within the later of (i)
9 150 days after the Authority's fiscal year or (ii) 30 days after the audited financial
10 statements become available for release;

11 **(2)** a copy of any notice to be given to the registered owners
12 of the Bonds, including, without limitation, notice of any redemption of or defeasance
13 of Bonds, and any certificate rendered pursuant to the Bond Legislation relating to
14 the security for the Bonds; and

15 **(3)** such additional information as it may reasonably request.

16 **I.** The Authority shall notify Series 2006A Bond Insurer of any
17 failure of the Authority to provide relevant notices, certificates, or other documents.

18 **J.** The Authority will permit Series 2006A Bond Insurer to discuss
19 the affairs, finances and accounts of the Authority or any information the Series
20 2006A Bond Insurer may reasonably request regarding the security for the Series
21 2006A Bonds with appropriate officers of the Authority. The Authority will permit the
22 Series 2006A Bond Insurer to have access to the Project and have access to and
23 to make copies of all books and records relating to the Series 2006A Bonds at any
24 reasonable time.

25 **K.** The Series 2006A Bond Insurer shall have the right to direct an
26 accounting at the Authority's expense, and the Authority's failure to comply with
27 such direction within thirty (30) days after receipt of written notice of the direction
28 from the Series 2006A Bond Insurer shall be deemed a default hereunder; provided,
29 however, that if compliance cannot occur within such period, then such period will
30 be extended so long as compliance is begun within such period and diligently
31 pursued, but only if such extension would not materially adversely affect the interest

1 of any registered owner of the Bonds.

2 **L.** Notwithstanding any other provision of the Bond Legislation, the
3 Authority shall immediately notify the Series 2006A Bond Insurer if at any time there
4 are insufficient moneys to make any payments of principal and/or interest as
5 required and immediately upon the occurrence of any Event of Default hereunder.

6 **M.** To the extent that the Authority has entered into a continuing
7 disclosure agreement with respect to the Series 2006A Bonds, Bond Insurer shall
8 be included as a party to be notified.

9 **N.** As long as the Series 2006A Municipal Bond Insurance Policy
10 shall be in full force and effect, the Authority and Paying Agent agree to comply with
11 the following provisions:

12 **(1)** In the event that, on the second Business Day, and again
13 on the Business Day, prior to the payment date on the Series 2006A Bonds, the
14 Paying Agent has not received sufficient moneys to pay all principal of and interest
15 on the Series 2006A Bonds due on the second following or following, as the case
16 may be, Business Day, the Paying Agent shall immediately notify the the Series
17 2006A Bond Insurer or its designee on the same Business Day by telephone or
18 telegraph, confirmed in writing by registered or certified mail, of the amount of the
19 deficiency.

20 **(2)** If the deficiency is made up in whole or in part prior to or
21 on the payment date, the Paying Agent shall so notify the Insurer or its designee.

22 **(3)** In addition, if the Paying Agent has notice that any
23 Bondholder has been required to disgorge payments of principal or interest on the
24 Bonds to a trustee in bankruptcy or creditors or others pursuant to a final judgment
25 by a court of competent jurisdiction that such payment constitutes an avoidable
26 preference to such Bondholder within the meaning of any applicable bankruptcy
27 laws, then the Paying Agent shall notify the the Series 2006A Bond Insurer or its
28 designee of such fact by telephone or telegraphic notice, confirmed in writing by
29 registered or certified mail.

30 **(4)** The Paying Agent is hereby irrevocably designated,
31 appointed, directed and authorized to act as attorney-in-fact for Holders of the

1 Series 2006A Bonds as follows:

2 **(a)** If and to the extent there is a deficiency in amounts
3 required to pay interest on the Series 2006A Bonds, the Paying Agent shall (a)
4 execute and deliver to the Insurer's Paying Agent (the "Insurance Paying Agent"),
5 in form satisfactory to the Insurance Paying Agent, an instrument appointing the
6 Insurer as agent for such Holders in any legal proceeding related to the payment of
7 such interest and an assignment to the Insurer of the claims for interest to which
8 such deficiency relates and which are paid by the Insurer, (b) receive as designee
9 of the respective Holders (and not as Paying Agent) in accordance with the tenor of
10 the Policy payment from the Insurance Paying Agent with respect to the claims for
11 interest so assigned, and (c) disburse the same to such respective Holders; and

12 **(b)** If and to the extent of a deficiency in amounts required
13 to pay principal of the Series 2006A Bonds, the Paying Agent shall (a) execute and
14 deliver to the Insurance Paying Agent in form satisfactory to the Insurance Paying
15 Agent an instrument appointing the Insurer as agent for such Holders in any legal
16 proceeding relating to the payment of such principal and an assignment to the
17 Series 2006A Bond Insurer of any of the Bond surrendered to the Insurance Paying
18 Agent of so much of the principal amount thereof as has not previously been paid
19 or for which moneys are not held by the Paying Agent and available for such
20 payment (but such assignment shall be delivered only if payment from the Insurance
21 Paying Agent is received), (b) receive as designee of the respective Holders (and
22 not as Paying Agent) in accordance with the tenor of the Policy payment therefor
23 from the Insurance Paying Agent, and (c) disburse the same to such Holders.

24 **(c)** Payments with respect to claims for interest on and
25 principal of Series 2006A Bonds disbursed by the Paying Agent from proceeds of
26 the Policy shall not be considered to discharge the obligation of the Authority with
27 respect to such Series 2006A Bonds, and the Insurer shall become the owner of
28 such unpaid Bond and claims for the interest in accordance with the tenor of the
29 assignment made to it under the provisions of this subsection or otherwise.

30 **(d)** Irrespective of whether any such assignment is executed
31 and delivered, the Authority and the Paying Agent hereby agree for the benefit of the

1 Insurer that:

2 (i) They recognize that to the extent the Series
3 2006A Bond Insurer makes payments, directly or indirectly (as by paying through
4 the Paying Agent), on account of principal of or interest on the Series 2006A Bonds,
5 the Series 2006A Bond Insurer will be subrogated to the rights of such Holders to
6 receive the amount of such principal and interest from the Authority, with interest
7 thereon as provided and solely from the sources stated in the Bond Legislation and
8 the Series 2006A Bonds; and

9 (ii) They will accordingly pay to the Series
10 2006A Bond Insurer the amount of such principal and interest (including principal
11 and interest recovered under subparagraph (ii) of the first paragraph of the Policy,
12 which principal and interest shall be deemed past due and not to have been paid),
13 with interest thereon as provided in the Bond Legislation and the Series 2006A
14 Bonds, but only from the sources and in the manner provided therein for the
15 payment of principal of and interest on the Series 2006A Bonds to Holders, and will
16 otherwise treat the Series 2006A Bond Insurer as the owner of such rights to the
17 amount of such principal and interest.

18 (5) In connection with the issuance of additional Bonds, the
19 Authority shall deliver to the Series 2006A Bond Insurer a copy of the disclosure
20 document, if any, circulated with respect to such additional Bonds.

21 (6) Copies of any amendments made to the documents
22 executed in connection with the issuance of the Series 2006A Bonds which are
23 consented to by the Insurer shall be sent to Standard & Poor's Corporation.

24 (7) The Series 2006A Bond Insurer shall receive notice of
25 the resignation or removal of the Paying Agent and the appointment of a successor
26 thereto.

27 (8) The Series 2006A Insurer shall receive copies of all
28 notices required to be delivered to Bondholders and, on an annual basis, copies of
29 the Authority's audited financial statements and annual budget.

30 All notices required to be given to the Series 2006A Bond Insurer shall be in
31 writing and shall be sent by registered or certified mail addressed to the Series

2006A Bond Insurer named in the Bond Purchase Agreement.

(9) The Authority agrees to reimburse the Series 2006A Bond Insurer immediately and unconditionally upon demand, to the extent permitted by law, for all reasonable expenses, including attorneys' fees and expenses, incurred by the Series 2006A Bond Insurer in connection with (i) the enforcement by the Series 2006A Bond Insurer of the Authority's obligations, or the preservation or defense of any rights of the Series 2006A Bond Insurer, under this Sale Resolution and any other document executed in connection with the issuance of the Series 2006A Bonds, and (ii) any consent, amendment, waiver or other action with respect to the Sale Resolution or any related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank's Prime Rate plus 3% or the maximum interest rate permitted by law, whichever is less. In addition, the Series 2006A Bond Insurer reserves the right to charge a fee in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

(10) The Authority shall not enter into any agreement nor shall it consent to or participate in any arrangement pursuant to which Series 2006A Bonds are tendered or purchased for any purpose other than the redemption and cancellation or legal defeasance of such Series 2006A Bonds without the prior written consent of the Bond Insurer.

O. To the extent that this Sale Resolution confers upon or gives or grants to the Series 2006A Bond Insurer any right, remedy or claim under or by reason of this Sale Resolution, the Series 2006A Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. Nothing in this Sale Resolution expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Authority, the Series 2006A Bond Insurer, the Paying Agent, and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Sale Resolution or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Sale Resolution contained by and on behalf of the Authority shall

1 be for the sole and exclusive benefit of the Authority, Bond Insurer, Paying Agent,
2 and the registered owners of the Bonds. The Authority and the Series 2006A Bond
3 Insurer may, by mutual written agreement, delete, alter, or add new provisions
4 related to this Section 8 for the benefit to the owners of the Bonds.

5 **SECTION 9.** Sale of Series 2006A Bonds. The Sale of the Series 2006A
6 Bonds in a negotiated sale to the Purchaser for the principal amount (\$____)
7 thereof, less an underwriter's discount of \$_____ plus an original issue net
8 premium of \$_____, is approved. The sale of the Series 2006A Bonds to the public
9 at the initial offering price is approved.

10 **SECTION 10.** Approval and Use of Documents. The forms, terms and
11 provisions of the Preliminary Official Statement, the proposed form of the Official
12 Statement and the form of Bond Purchase Agreement and the form of Continuing
13 Disclosure Undertaking on file with the Authority and presented to the Board are
14 ratified and approved. The use by the Purchaser, in connection with the offering
15 and sale of the Bonds, of the Preliminary Official Statement and the Official
16 Statement (with terms which are not inconsistent with the Bond Legislation) is
17 ratified and approved.

18 **SECTION 11.** Appropriations; Bond Proceeds. The Board, having been fully
19 informed of and having considered all pertinent facts and circumstances, does
20 hereby find, determine and declare that the proceeds from the sale of the Bonds
21 shall be appropriated and deposited as follows:

22 **A.** \$____ of proceeds of the Series 2006A Bonds designated for
23 the payment of the premium with respect to the Series 2006A Municipal Bond
24 Insurance Policy shall be paid to the Series 2006A Bond Insurer.

25 **B.** \$____ of proceeds of the Series 2006A Bonds will be deposited
26 into the Expense Account to pay Expenses, with any amounts not expended within
27 ninety (90) days deposited to the Acquisition Fund.

28 **C.** \$____, the remaining proceeds of the Bonds, shall be deposited
29 to the Acquisition Fund.

30 **D.** \$____ of legally available funds, other than proceeds of the
31 Series 2006A Bonds, will be deposited to the Redemption Account.

1 **SECTION 12.** Sale Resolution Irrepealable. After any Series 2006A Bonds
2 are issued, this Sale Resolution shall be and remain irrepealable until the principal
3 of, and interest on the Series 2006A Bonds are fully paid and the Series 2006A
4 Bonds are cancelled or there has been defeasance of the Series 2006A Bonds as
5 provided in the Bond Legislation.

6 **SECTION 13.** Repealer Clause. All bylaws, orders and resolutions, or parts
7 thereof, inconsistent with this Sale Resolution are repealed to the extent of such
8 inconsistency. This repealer shall not be construed to revive any bylaw, order or
9 resolution, or part thereof, previously repealed.

10 **SECTION 14.** Severability. If any section, paragraph, clause or provision of
11 this Sale Resolution shall for any reason be held to be invalid or unenforceable, the
12 invalidity or unenforceability of such section, paragraph, clause or provision shall not
13 affect any of the remaining provisions of this Sale Resolution.

14 **SECTION 15.** Effective Date. This Sale Resolution shall be in full force and
15 effect immediately upon adoption.

16

17 *[Remainder of page intentionally left blank]*

1 PASSED AND ADOPTED THIS 21st DAY OF JUNE, 2006.
2 BY A VOTE OF ____ FOR AND ____ AGAINST.
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5 _____
6 Chair
7 ATTEST:
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9 _____
10 Secretary